

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE R. WRIGHT,
Plaintiff,
v.
MICHAEL ASTRUE,*
Defendant

No. C-06-4606 MMC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT;
REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff Lawrence R. Wright ("Wright") brings the above-titled action pursuant to 42 U.S.C. §405(g) to obtain judicial review of a final decision of the Commissioner of the Social Security Administration ("the Commissioner"). Before the Court is Wright's motion for summary judgment and the Commissioner's cross-motion for summary judgment. Pursuant to Civil Local Rule 16-5, the motions have been submitted on the papers without oral argument. Having considered the papers filed in support of and in opposition to the motions, the Court rules as follows.

BACKGROUND

On November 18, 2003, Wright filed an application for disability benefits, alleging he has been unable to work since October 7, 2002, (see Transcript of Record ("Tr.") 49), as a

*Michael J. Astrue is substituted as defendant. See Fed. R. Civ. P. 25(d)(1).

1 result of “back and both hip injury,” “collitis causing abdominal pain,” and “acid reflux,” (see
 2 Tr. 63). Wright’s application was denied by the Social Security Administration initially, (see
 3 Tr. 22-25), and upon reconsideration, (see Tr. 28-32). Wright then requested a hearing
 4 before an administrative law judge (“ALJ”), alleging in such request that he could not work
 5 because of “a herniated bulging disc” and “constant pain” in his “shoulders, hips, and back.”
 6 (See Tr. 33-35.)¹

7 On March 17, 2005, the ALJ conducted a hearing. (See Tr. 14.) Thereafter, on
 8 October 27, 2005, the ALJ issued a decision, finding Wright was not entitled to benefits.
 9 (See Tr. 14-19.) In so doing, the ALJ analyzed Wright’s claim under the SSA’s five-step
 10 sequential evaluation process,² finding as follows: (1) Wright has not engaged in
 11 substantial gainful employment since 2002, (see Tr. 18); (2) Wright has a severe
 12 “musculoskeletal impairment,” specifically, “degenerative disc disease” of the lumbar
 13 spine, (see Tr. 15); (3) Wright does not have an impairment that meets or equals a listed
 14 impairment, (see Tr. 15); (4) Wright can perform “work activity at the light exertional level
 15 with occasional stooping or crouching and a sit or stand option,” and, consequently, cannot
 16 perform his past relevant work as a painter because such work requires a “medium”
 17 exertional level, (see Tr. 18); and (5) Wright can work as a “product assembler,” which jobs
 18 exist in significant numbers within the national economy, (see Tr. 18, 19).

20 ¹ At the administrative hearing, Wright confirmed he is no longer asserting he is
 21 unable to work because of colitis and/or acid reflux. (See Tr. 245.)

22 ² “The Commissioner follows a five step sequential evaluation process in assessing
 whether a claimant is disabled.

23 Step one: Is the claimant engaging in substantial gainful activity? If so, the
 claimant is found not disabled. If not, proceed to step two.

24 Step two: Does the claimant have a “severe” impairment? If so, proceed to step
 three. If not, then a finding of not disabled is appropriate.

25 Step three: Does the claimant’s impairment or combination of impairments meet or
 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the claimant is
 26 automatically determined disabled. If not, proceed to step four.

27 Step four: Is the claimant capable of performing his past work? If so, the claimant
 is not disabled. If not, proceed to step five.

28 Step five: Does the claimant have the residual functional capacity to perform any
 other work? If so, the claimant is not disabled. If not, the claimant is disabled.”

McCartey v. Massanari, 298 F.3d 1072, 1074 n. 6 (9th Cir. 2002).

1 On December 13, 2005, Wright filed a Request for Review with the Appeals Council,
2 which subsequently denied review. (See Tr. 4-6, 9.) Wright thereafter filed the instant
3 action for judicial review.

4 DISCUSSION

5 In his motion for summary judgment, Wright argues, inter alia, that the ALJ erred at
6 step three by not setting forth an explanation for his finding that Wright's impairments do
7 not equal a listed impairment.

8 An award of benefits is required if a claimant's impairments meet or equal a listed
9 impairment. See 20 C.F.R. §404.1520(d). The listing on which Wright relied is contained
10 in 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 1.04, specifically, "degenerative disc disease . . .
11 resulting in compromise of a nerve root (including the cauda equina) or the spinal cord,"
12 with "nerve root compression characterized by neuro-anatomic distribution of pain,
13 limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or
14 muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the
15 lower back, positive straight-leg raising test (sitting and supine)." See 20 C.F.R. Pt. 404,
16 Subpt. P, App.1 § 1.04.

17 As noted, Wright does not argue his impairments meet such listing; rather, Wright
18 argues his impairments equal the listing. Equivalence is determined by comparing the
19 "symptoms, signs and laboratory findings" pertaining to the claimant "with the medical
20 criteria shown with the listed impairment." See 20 C.F.R. §404.1526(a). In determining
21 equivalency under step three, "the ALJ must explain adequately his evaluation of
22 alternative tests and the combined effects of the impairments." See Marcia v. Sullivan, 900
23 F. 2d 172, 176 (9th Cir. 1990). A statement that a claimant does not equal the listing is
24 insufficient. See id. Rather "[a]n examiner's findings should be as comprehensive and
25 analytical as feasible and, where appropriate, should include a statement of subordinate
26 factual foundations on which the ultimate factual conclusions are based, so that a reviewing
27 court may know the basis for the decision." See Lewin v. Schweiker, 654 F. 2d 631, 634
28 (9th Cir. 1981) (internal quotation and citation omitted).

Here, Wright offered medical evidence that, if credited, could support a finding of equivalence, specifically, the Declaration of Kenneth Gjeltrema, M.D. (See Tr. 115-16.) Although the ALJ's opinion includes a finding that "[Wright's] severe impairment does not . . . equal any listed impairment," (see Tr. 19), the ALJ did not set forth any reasoning for such conclusion.³

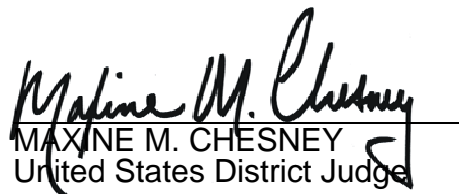
Under such circumstances, the Court finds the ALJ's statement that Wright's impairment did not equal the above-referenced listing is insufficient, and, accordingly, will grant Wright's motion, deny the Commissioner's cross-motion, and remand the matter for proper consideration of step three equivalence. See Marcia, 900 F. 2d at 176 (holding finding by ALJ that claimant "failed to provide evidence of medically determinable impairments that meet or equal the Listings" insufficient; remanding for further proceedings).⁴

CONCLUSION

For the reasons stated, Wright's motion for summary judgment is hereby GRANTED, and Commissioner's cross-motion is hereby DENIED, and the matter is hereby REMANDED for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: March 26, 2008


MAXINE M. CHESNEY
United States District Judge

³In his cross-motion, the Commissioner sets forth a theory as to why Wright's evidence is insufficient. The Court, however, does not review the record de novo; rather, the Court reviews the reasoning set forth by the ALJ. See SEC v. Chenery Corp., 332 U.S. 194, 196 (1947) (holding where reviewing court evaluates administrative agency's decision, court reviews decision "solely" on grounds invoked by agency).

⁴In light of this finding, the Court does not address Wright's additional arguments, each of which pertains to step five. If the ALJ determines Wright is not entitled to benefits at step three, the ALJ is not precluded from addressing any other asserted deficiency noted in Wright's motion for summary judgment.